

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON SENATE BILL 330

Call to order: By Chairman Tom Beck, on March 17, 1989, at 8:00 A.M.

ROLL CALL

Members Present: Senator Beck, Senator Noble, and Senator Williams. Representative Whalen and Representative Kilpatrick.

Members Excused: None

Members Absent: Representative Thomas

Staff Present: Jaelene Johnson, Secretary

DISPOSITION OF SENATE BILL 330

Discussion: Senator Beck - "Susan Witte is going to explain why they want this in the bill and then I'm going to let Bonny Tippy explain why they want it out."

Susan Witte - "Section 1...The reason the Commissioners office wants section 1 in the bill is because present law provides that an insurance agent--they're selling for a company that is not admitted to do business in this state. The Insurance Commissioner can revoke the insurance agent's license. There is no reciprocal provision for an unauthorized insurance company using insurance agents in this state. So, if you get the agent's license, why can't you go after the insurance company which isn't authorized to do business in the state? It's just a reverse, you go after the company as well as the agent. That's why we want it in."

Bonny Tippy explains the House Business and Economic Development Committee took out section 1.

Bonny Tippy - "(1.) This entire bill except for section 1 is model NAIC language. Section 1 was put in by an Insurance Commissioner in order to address a problem we don't believe a problem. She wants to be able to have the authority to remove an insurance company's certificate of authority if she feels that they are not taking fast enough action against an

agent that may or may not be guilty of some kind of an infringement...The vast majority of agents are independent contractors. They are not employees of insurance companies. They are independent contractors...They feel that if they have an agent that has been with them for several years, that they want to give that person a benefit of the doubt before they take immediate action. Just because there has been a complaint filed does not mean that person has done something wrong...Under this bill, the Insurance Commissioner could revoke a companies entire certificate of authority to do business in this state because she would be of the opinion that they did not act quickly enough upon report of an agents wrong-doing. What that could do is put 100 or 200 or 300 agents out of business in this state."

Jackie Terrell - "The insurance code has a number of sections that address this problem...Chapter 17 deals with the agents conduct and commissioners power to address any conduct that is not acceptable or is damaging to the policy holders. 17-102 is the definition of the agent and the appointment. 17-1001 sub (1) sub (a) through (f) are the things that could cause that agent to lose the licence. 17-1102 discrepancy accountability for premiums..."

Representative Whalen - "That (Chapter 17) allows disciplinary action against agents?"

Ms. Terrell indicated that it was.

Bonny Tippy - "There was a case--the New York Life case. Where an agent who had been with the company a very longtime...He was a man who was found to be doing things that weren't appropriate at all. He was selling policies to other family members without their knowledge...He was suspended by New York Life. However, the process took a long time and I know the commissioner took some moves to suspend the certificate of authority of New York Life. There are about two hundred to three hundred New York Life agents in Montana...If that certificate of authority had been suspended over this one agents wrong-doing, all of those people would have been put out of work."

Representative Whalen - "What authority was in title 28?"

Jackie Terrell - "That would be the general laws of agency retail...In any lawsuit, those laws of agency are also going to control the relationship between the agent and the company."

Representative Whalen - "So, she would have to get involved in a civil action under title 28?"

Ms. Terrell stated that is correct.

Jackie Terrell explained, "The Commissioner may, after conducting a hearing for 33-1701, impose a fine not to exceed the sum of \$25,000 upon a person found violating any provision of this code."

Susan Witte - "On 33-2119 which is section one where the amendment goes in. If you will look at sub-section (c)--Right now, the Insurance Commissioner can go after an insurance agent who is selling a product in this state where that product is being sold by an unauthorized company. If a company is not authorized to do business in the state, we can go after that insurance agent. Sub-section (c) will allow the Commissioner to also go after the unauthorized insurance company from using an agency in the state. Sub-section (c) is pretty important...Sub-section (d) We can go after an insurance company for actions which are injurious to the public. In other words, if they have notification or they see a bunch of altered applications coming from one of their agents in the field, we can't use general agency law. We're pretty much confined to title 23. So, if we are going to go after the insurance company and its relationship with its agent, who is submitting altered applications...We have to get into that agency relationship. Some of these insurance companies have received lots of applications where it is obvious there has been forgeries made. The company should notify us of these problems...Section (d) may be a problem...I don't see the industries problem with (c)."

Jackie Terrell - "This (Section "c") does not address unauthorized companies. This is to allow you to revoke the certificate of authority of an authorized company who is operating in this state and who has one agent who may have sold insurance improperly...This is not against unauthorized companies. Absolutely, you should go after an unauthorized company. But it's the authorized company that has one bad agent that we are concerned about...Section (c) gives the Commissioner the power to revoke their ability to do business in Montana."

Senator Beck - "You've got a problem with unlicensed insurance companies trying to do business in Montana. Is there any way you can address that particular problem?"

Susan Witte - "Off hand, no. But, there is a problem with using unlicensed agents too."

Representative Whalen - "The impression I'm getting from listening to this discussion--although the Insurance Commissioner may have authority under the general civil statutes to assume a particular insurance company that Ms. Witte is having particular problems with...The whole purpose of having an insurance department is so some of those things can be handled through her inherent powers." Representative Whalen indicated that the department should have sole authority to keep from constantly having to jump into the judicial system. "That's why we give executive agencies and departments authority to do different things...What we are trying to do here is give her (Ms. Witte) direct authority under the powers of her office to do something which she now has to go into the judicial system to obtain...She doesn't have to exercise her authority but it's an option she has...Just because she has an option sometimes that's enough in order to get a problem corrected. You don't have to put three hundred agents out in the cold."

Jackie Terrell - "In most instances an insurance company does not have control the same way they would if they were an employer over the agent. You are imposing a very strong power over the company for a relationship they do not have that sort of control over."

Representative Whalen - "I think we have to be realistic when we are giving authority to an Insurance Commissioner. I presume she's got a little bit of sense when she's going exercise the authority...I take it, your objection is sub-section (d) on line 24, page 2...Is that correct?"

Senator Beck - "Susan Witte, would this bill help correct any of your problems?"

Ms. Witte - "Yes, it would...It's an option. It's not always used."

Representative Whalen - "I would move that section one language be reinserted in the bill with the exception that sub-section (c) and (d) be deleted."

Representative Whalen - "Which of those provisions does your office think is most important, section (c) or (d)? If a compromise were to be struck on those two provisions, which one is the most important?"

Susan Witte - "I guess I would have to say section (d)."

SENATE COMMITTEE ON CONFERENCE COMMITTEE ON SB 330

March 17, 1989

Page 5 of 5

(The motion was to insert section one back into the bill and strike sub-sections (c) and (d).) The motion carried with the Senate concurring unanimously Senator Beck, Senator Williams, and Senator Noble voting yes. Representative Whalen and Representative Kilpatrick voting yes.

ADJOURNMENT

Adjournment At: 8:23 A.M.


SENATOR TOM BECK, Chairman

TB/jj

ROLL CALL

CONFERENCE

COMMITTEE ON SENATE BILL 330

51st LEGISLATIVE SESSION -- 1989

Date 3-17-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR TOM BECK	X		
SENATOR JERRY NOBLE	X		
SENATOR BOB WILLIAMS	X		
REP. TIMOTHY WHALEN	X		
REP. TOM KILPATRICK	X		

Each day attach to minutes.

CONFERENCE COMMITTEE REPORT

Report No. 1
Page 1 of 2
March 18, 1989

MR PRESIDENT AND MR. SPEAKER

We, your Free Conference Committee on SB 330 met and recommend that this Conference Committee report be adopted and that SB 330 (reference copy -- salmon) be amended as indicated in the INSTRUCTIONS.

FOR THE SENATE

Sen. Beck, Chairman

Sen. Noble

Sen. Williams

FOR THE HOUSE

Rep. Whalen

Rep. Kilpatrick

Rep. Thomas

We Considered, The House Committee on Business and Economic Development amendments to SB 330 (third reading copy -- blue) dated March 3, 1989.

INSTRUCTIONS: Strike: The House Committee on Business and Economic Developments amendments Nos. 2 and 3 in their entirety.

Amend SB 330 (reference copy -- salmon) as follows.

1. Title, line 13.
Following: "33-2-119"
Insert: "33-2-119,"

2. Page 4.
Following, line 12
Insert: "Section 1. Section 33-2-119, MCA, is amended to read:
"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:
(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

continued

CONFERENCE COMMITTEE, SB 330
Page 2 of 2
March 18, 1989

- (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:
 - (i) after the reinsurance transaction all parties will be in compliance with Montana law; and
 - (ii) the transaction will substantially reduce protection and service to Montana policyholders.
- (2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:
 - (a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;
 - (b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;
 - (c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;
 - (d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether or not the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such the third person, or without just cause compels such the insured or claimant to accept less than the amount due ~~from him~~ or to employ attorneys or to bring suit against the insurer or ~~such an~~ insured to secure full payment or settlement of ~~such the~~ claims;
 - (e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.
 - (3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

Renumber: subsequent sections

ADOPT

REJECT

SB 330

STANDING COMMITTEE REPORT

March 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 330 (blue reference copy), with statement of intent included, be concurred in as amended.

Signed: 
Robert Pavlovich, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, lines 5 through 9.
Following: "INDUSTRY;" on line 5
Strike: remainder of line 5 through "AGENTS;" on line 9
2. Title, line 13.
Strike: "33-2-119,"
3. Page 2, line 4.
Strike: section 1 in its entirety
Renumber: subsequent sections

HOUSE

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BILL:

SB330

DATE:

3/17

PROPOSNENTS

[illegible]